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Bondor / Long Group: investigation closure report

Date: 14 May 2019

Purpose

1. This report explains the reasons for the Commission's decision to close the investigation under section 47 of the Commerce Act 1986 (the Act) into the acquisition by Bondor New Zealand Limited (Bondor) of the business and assets of Long Holdings Limited, The Insulation Panel & Door Co Limited and Long Panel Limited (together, the Long Group).

Background

Industry background

2. Insulated panel is a building material used to make walls, roofs and ceilings. Uses include: cool and cold stores, architectural cladding, and some industrial buildings.
3. There are four types of relevant insulated panels. The main difference between these panels is their core material:
 - 3.1 expanded polystyrene (EPS) panels have a core of expanded polystyrene beads;
 - 3.2 phenolic resin panels such as Bondor's XFLAM have a core of syntactic foam;
 - 3.3 polyisocyanurate (PIR) panels have a core of thermoset plastic; and
 - 3.4 mineral wool panels have a rock fibre insulation core.
4. Each of PIR, phenolic resin, and mineral wool panels are fire-resistant while EPS panels are not.¹ In the rest of this report we use the following two categories of insulated panel:
 - 4.1 EPS panels; and
 - 4.2 fire-resistant panels (phenolic resin, PIR, and mineral wool panels).
5. The other main difference between the categories of panels is the price. EPS panels are normally much cheaper than the fire-resistant panels. However, fire-resistant panels can reduce the cost of insurance premiums for a building.

Parties

Bondor

6. Bondor produces EPS and XFLAM panels at its manufacturing plant in Christchurch. It also imports a small amount of PIR and mineral wool panels from Australia. Prior to the acquisition, Bondor used third party installation labour firms to install its insulated panels.

¹ Mineral wool is the only non-combustible panel (ie, it has the highest fire resistance). It is the most expensive type of insulated panel and used where a non-combustible solution is required. Under the New Zealand building code EPS panels cannot be used in buildings over 7 meters.

Long Group

7. Prior to the acquisition, Long Group manufactured EPS panels in Palmerston North. It also purchased and installed PIR panels from Kingspan and was an installer of insulated panels.

The investigation

8. On 25 February 2019, the Commission opened an investigation under section 47 of the Act. The focus of the investigation was to establish whether the acquisition:
 - 8.1 removed a competitor, or potential competitor, such that the merged entity would be able to unilaterally increase the price or reduce the quality of EPS panels (horizontal unilateral effects);
 - 8.2 increased the potential for the merged entity and all or some of its remaining competitors to coordinate their behaviour and collectively exercise market power such that output reduces and/or prices increase across the market (coordinated effects); and/or
 - 8.3 gave the merged entity the ability and incentive to foreclose panel supply to downstream rivals in the market for installation (vertical effects).

Market definition

9. Taking a conservative approach, we assessed the impact of the acquisition in the following markets:
 - 9.1 the national market for the manufacture and supply of EPS panels; and
 - 9.2 the supply of installation services for insulated panels.
10. As the parties overlapped in the manufacture of EPS panels, we considered the relevant product dimension to be EPS panels only.² However, we also considered the constraint from fire-resistant panels in the competition analysis.
11. We used a national EPS panel market for the purposes of our analysis because Bondor supplied a large number of panels from the South Island to the North Island. That said, transport costs mean that EPS panel suppliers are geographically differentiated. Therefore, in assessing the effects of the acquisition we focused on customers located in the North Island, as they are most likely to be affected.

Horizontal unilateral effects

12. We consider that the acquisition has affected competition in the manufacture and supply of EPS panels in New Zealand (particularly for North Island customers) due to horizontal unilateral effects. However, we did not have sufficient evidence to suggest this effect would be substantial because:

² If we did not have concerns in a narrow product market for the supply of EPS panels only, it is unlikely we would have concerns in a wider product market including EPS and fire-resistant panels.

- 12.1 although Bondor and Long Group competed for customers in the North Island, it is unclear that they were each other's closest competitors. There are several reasons for this including transport costs and the presence of other competitors;
- 12.2 Metalcraft is the largest supplier of EPS panels in the North Island and has significant spare capacity;
- 12.3 there are two other EPS panel manufacturers in New Zealand. EPS Foam has a plant in Auckland and Expol has a plant in Christchurch. Both also have spare capacity; and
- 12.4 although we defined a market for EPS panels there may be some customers who would be prepared to switch to other products such as fire-resistant panels if the market price increased.

Coordinated effects

- 13. We considered two ways that coordination might occur:
 - 13.1 coordinating on price; and
 - 13.2 coordination on which customers to compete for (market allocation).
- 14. To coordinate on price, remaining EPS panel suppliers would need to recognise that they can reach a more profitable outcome if they accommodate each other's price increases and be able to monitor and punish any cheating from that understanding. However, we do not have sufficient evidence to show a likely substantial lessening of competition (SLC) due to price coordination because:
 - 14.1 a large proportion of sales are made by tender where the price is not transparent which would make it hard for the remaining suppliers to monitor the price;
 - 14.2 there are smaller players that could disrupt coordination - competitors in the market have differing levels of capacity and are in different locations which may create alternative pricing incentives; and
 - 14.3 there may be some customers who would be prepared to switch to other products if the market price was to increase - some customers may be prepared to switch to fire-resistant panels or those customers who buy EPS panels for architectural purposes might switch to other building materials.
- 15. Alternatively, EPS panel suppliers could attempt to settle into a pattern of only competing for certain customers. However, we do not have sufficient evidence to show a likely SLC due to customer coordination as it is unclear how the firms could effectively allocate customers given the different types of customers such as small and large installers, construction firms and end users.

Vertical effects

16. Vertical mergers occur between two firms who do not compete directly but who operate on different levels of the supply chain. In this case, EPS panels are an input into the supply of installation services.
17. We consider that vertical input foreclosure is unlikely as installers can install both EPS and fire-resistant panels. There is a wide range of EPS and fire-resistant panels manufacturers and importers from which installers can source panels outside of Bondor including Metalcraft, EPS Foam, Kingspan Group, and Expol.

Outcome

18. Overall, the Commission considers the evidence obtained during our investigation has not established that the acquisition would be likely to result in an SLC.
19. Accordingly, the Commission has decided to close its investigation and take no further action.

Dr Mark Berry

Chair